

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 04-0092
Sales and Withholding Tax
Responsible Officer
For the Tax Period 1999-9/30/2000**

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ISSUE

1. Sales and Use Tax-Responsible Officer Liability

Authority: IC 6-2.5-9-3, IC 6-8.1-5-1(b), Indiana Department of Revenue v. Safayan 654 N.E. 2nd 279 (Ind.1995).

The taxpayer protests the assessment of responsible officer liability for unpaid corporate sales taxes.

STATEMENT OF FACTS

The taxpayer was the President of a corporation that did not properly remit sales taxes to the state during the tax period 1999-September 30, 2000. The Indiana Department of Revenue, hereinafter referred to as the "department," assessed the unpaid sales taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax. A hearing was held and this Letter of Findings results.

1. Sales and Use Tax-Responsible Officer Liability

Discussion

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

Pursuant to Indiana Department of Revenue v. Safayan 654 N.E. 2nd 279 (Ind.1995) any officer, employee, or other person who has the authority to see that they are paid has the statutory duty to remit sales and withholding taxes to the state. As the President of the corporation, the taxpayer had the responsibility to oversee the corporation. The taxpayer failed to insure that the corporation fulfilled its financial responsibilities by remitting trust taxes to the Indiana Department of Revenue. Therefore, the taxpayer had the statutory duty to remit the sales taxes and is personally liable for the payment of those taxes.

Finding

The taxpayer's protest is denied.

KMA/JMM/MR--041908